

Approved For Release 2002/07/02 : CIA-RDP77-00512R000100030221-0
~~CONFIDENTIAL~~

DD/A 75-4314

28 AUG 1975

MEMORANDUM FOR: Director of Central Intelligence

SUBJECT : Allegations by [redacted]
Concerning Administrative Practices in
the CIA

25X1A

25X1A 1. [redacted] a senior officer within
the Office of Personnel, communicated with you on 15 July
1975 concerning administrative practices in the CIA. A copy
of [redacted] memorandum is to be found at Attachment #1.
It is my understanding that [redacted] memorandum was not
submitted to you upon receipt, but has been held pending
receipt of a position paper by the Office of Personnel on
matters raised by [redacted]

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25X1A 2. There is also attached for your information a memo-
randum addressed to you by the Director of Personnel responding
to the issues raised by [redacted] (Attachment #2). With
only one exception, I completely endorse the position taken on
these allegations.

25X1A 3. One of [redacted] allegations is:

"The overtime regulations of this Agency,
established in 1961, etc., I believe, is violation
of Federal law."

25X1A The Director of Personnel associates himself with the opinion
on the legality of our overtime regulations as stated by Mr.
[redacted]

4. The Office of General Counsel addressed itself to this
matter on 12 December 1974. A copy of the OGC memorandum is at
Attachment #3. OGC renders a legal position that the Agency is
acting in consonance with the statute in devising and administering
the overtime pay policy.

[redacted] 25X1

25X1A

5. I wish to address myself to two matters concerning [redacted] allegations and the reply by the Director of Personnel. I would urge you to very carefully consider any change in our overtime policy as it pertains, in certain selected cases, to the voluntary contribution of the first eight hours of overtime performed by professional employees. This policy has been in existence since 1962, and is universally accepted as a management device of this Agency. Withdrawal from this policy would cost well in excess of one million dollars per year, and would present management with many complex issues, not the least of which would be innumerable requests to authorize premium pay. The Office of General Counsel opinion states we are in a legally defensive position and, I believe, our advice on this matter must be taken from the Agency's attorneys and not its Personnel Officers.

6. I do not wish to examine [redacted] motivations 25X1A in submitting his memorandum of 15 July. Two events that were known to him on that date, however, may have been an influencing factor. Prior to that date, the Director of Personnel informed [redacted] he was being reassigned to other duties within the Office of Personnel. a decision which evoked very strong protest from [redacted] 25X1A secondly, was aware on 15 July that I had directed the Office of Personnel to undertake a review of the position classification policies and procedures of this Agency in an endeavor to ascertain if experiences exist in both the governmental and private sectors unknown to us and which, if studied, could assist us in this admittedly complex and difficult field.

7. I would recommend to you the following course of action:

a. Sign the attached piece of correspondence which I have prepared for your signature addressed to [redacted] and which acknowledges receipt of his memorandum to you and gives him indication of action taken to date. (This correspondence is at Attachment #4.)

b. You submit the papers addressed to you by [redacted] and Janney and my memorandum to the Inspector General and ask him to provide you with his advice and recommendations, as well as a final communication from you to [redacted]

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25X1A

25X1A

I would ask of you that, if there should be any differences of opinion between the Inspector General and the Director of Personnel, I be given the opportunity to discuss the matter with you before you adopt your final position.

John F. Blake
Deputy Director
for
Administration

- 25X1A
- 4 At [redacted] Memo to DCI, dtd 15 July '75
1. [redacted] D/OP Memo to DCI, dtd 19 August 1975
2. OGC Memo for Record, dtd 12 Dec. 1974
3. Proposed DCI Response to [redacted]

25X1A

Distribution:

Original & 1 - DCI w/Atts
1 - DDCI w/atts
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1 - DD/A Subject w/Atts
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1 - JFB Chrono

DD/A:JFBlake:der (25 August 1975)
Retyped: (27 August 1975)

15 JUL 1975

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MEMORANDUM FOR: William E. Colby, Director of Central Intelligence

SUBJECT : Administrative Practices in the CIA

1. There are administrative practices in the CIA which I believe are in violation of Federal laws or regulations, or are unconscionable. I have attempted to secure corrections of these practices through administrative channels without success.
2. I have, therefore, written this report.
3. I am the Chief of the Position Management and Compensation Division, a position I have held for approximately eight years. I have worked in this division and predecessor organizations for over twenty years. I am familiar with position grading actions that have taken place over this time which have resulted in improper escalation of the grade and pay structure. Many of the upgrading actions were ordered by administrative officials with full knowledge of the facts and over objections of the Position Management organization. I believe there is a serious question as to the validity of these levels.
4. There is present interest in decentralization of position classification functions, which would permit a still greater escalation of the grade and pay structure. I believe that action should be taken to prevent such decentralization and to correct present errors.
5. The overtime regulations of this Agency, established in 1962, are, I believe, in violation of Federal law. I attempted to correct these regulations by a report I submitted through administrative channels on June 6, 1974. Nothing has been done.
6. The independent contracting system in the Agency, I believe, is a further violation of law. The practice this Agency follows is inconsistent with that followed in other agencies and inconsistent with the duties of many such independent contractors.
7. I have not taken this course of writing you directly without long and careful thought. I have become convinced, over many years, that no improvement and no correction of errors will ever take place without direction from the top.

STAT

[Redacted]
Chief
Position Management & Compensation Division

Attachment

ADMINISTRATIVE PRACTICES IN THE CENTRAL INTELLIGENCE AGENCY

Problem

1. The grade structure of the Central Intelligence Agency is excessively high in comparison to levels existing elsewhere in the government for comparable work. This is contrary to the principle of equal pay for substantially equal work included in the U.S. Code Title 5, Section 5101.
2. The overtime and premium pay regulations and practices of the Agency are contrary to the requirements of Title 5 of the U.S. Code, Section 5541 to 5545.
3. Individuals designated as Independent Contractors in the Agency appear in many cases to be employees under the requirements of Social Security and Internal Revenue legislation requiring the deduction of Social Security taxes.

Background Data

A. Position and Grade Structure

1. The position classification system of the Central Intelligence Agency is based on the general government system applied in other agencies. Before the Classification Act of 1949 the Agency was under the review and control of the Civil Service Commission. Upon the enactment of this law, which exempted the Agency, the Agency agreed to follow the government system voluntarily without external control.
2. Initially the grade structure established was comparable to those in other Agencies of equivalent functional responsibility and for a number of years, Classification Personnel frequently made comparisons with other agencies to insure comparable levels. In succeeding years, pressures from senior officials resulted in a gradual elevation of the structure. The primary emphasis of the Office of Personnel was to provide service to operating components. Efforts to hold grades to reasonable levels were challenged on the ground that service was not being provided. Since no external controls were imposed on the Agency, Classification Personnel were subject to pressures both from operating officials and from officials within the administrative structure. As a result, it was not possible for the Position Management Organization to control the escalation.

B. Overtime and Premium Pay

The present overtime and premium pay regulations of the Agency were established about 1962 and have remained substantially unchanged. The basic principle of these regulations is to require most employees to work eight hours of overtime without compensation before being compensated for any additional overtime, to ignore the requirement that all hours over eight in one day are overtime, and that all hours over forty in one week are overtime. These requirements are not consistent with the provisions of the U.S. Code.

C. Independent Contractors

Independent Contractors can be defined as individuals who receive a specified contract sum for providing certain services. In many cases in the Agency, Independent Contractors perform the same duties as Staff employees and are determined to be Independent Contractors from a statement in the contract. The purpose of the contract appears to be to avoid requirements for deducting taxes and Social Security and providing employee benefits. It appears that such employment may be contrary to Internal Revenue or Social Security laws.

Analysis of the Problem

A. Position Grade Structure

1. The grade structure of the Agency has resulted in part from the establishment of positions necessary to recognize the level of functional responsibility. It has resulted in part, also, from the wish to accommodate individuals who have been promoted without regard to the levels of their performance by the Career Service System. This System is composed of boards in the various offices whose functions include the assignment and promotion of employees by so-called competitive evaluation, in many cases without consideration of the levels of the positions they occupy or the levels of work they perform. In cases where they are assigned to positions below their grade level, there is often pressure to upgrade the positions to accommodate their grades and avoid personal rank assignment. The views of supervisors have frequently not been considered in promotion of employees.

2. As a result of the continuing pressure for upgrading of positions, grades of positions have changed with little change in position responsibility, as follows:

GS-11 and GS-12 positions have advanced to GS-13 and GS-14.

GS-12 and GS-13 positions have advanced to GS-14,
GS-15, and GS-16.

GS-16's have become GS-17's or GS-18's.

3. The classification of higher grades has in some cases produced an inverse pyramid with more higher grades than lower grades or as it is sometimes called--more Chiefs than Indians. Efforts by the Position Management Organization to hold down grades or reduce them to reasonable levels have been ignored or overruled.

4. The results show, I believe, that Agency positions in many cases are overgraded one or two grades above elsewhere.

5. Agency officials are not satisfied with this grade difference over other Agencies. They continue to want more. They will not accept determinations that Agency grades are higher than elsewhere. In some cases they become angry when their grades are not raised; they threaten Position Management Personnel with being responsible for hamstringing their operations by forcing employees to resign to accept higher pay in industry. I believe this is partly the result of the inbred nature of the Agency--the emphasis on the belief that Agency employees are smarter than other people, more creative, more dynamic. Strange as this may seem, such beliefs have been pronounced by personnel officers.

6. Partly, I think, it is the result of lack of control, unwillingness on the part of senior officials to rock the boat. Office heads should be told to live with the grades they have and count themselves lucky. But they are not. There is interest at present in abolishing grade controls and giving office heads authority to set their own levels with only a budgetary control.

7. Deputy Undersecretary Crockett of the State Department made such a delegation of classification authority to major organizations of the Department of State in 1962. As a result, from 1962 to February 1971, there was a general escalation of levels in the Department of State which was completely inconsistent with levels of responsibility. An investigation was conducted and in 1971 position classification was again recentralized and efforts began to correct the mistakes.

8. Surveys were conducted which resulted in reductions of class levels at FS01 and FS02 by 23% and FS03 by 6%. These are the higher pay levels of the Department of State, equivalent to the supergrade and GS-15 levels. The reductions were modest, intended to reduce personnel impact. The CIA has made much progress in the same direction. Apart from the fact that money is being wasted on such profligacy, the government and the general public deserve more honest treatment.

B. Overtime Practice

1. The overtime regulations were designed to discourage the use of overtime in the Agency. This was done about 1962 and was accomplished by arbitrarily changing the provisions of law to provide that certain types of overtime did not qualify for overtime pay. Included were the first eight hours of overtime performed by professional employees, all hours over eight in one day, and all hours over forty in one week if the two week pay period included no more than eighty hours of duty. These regulations are contrary to Title 5 of the U.S. Code.

2. The same result could have been accomplished by requiring supervisors to avoid authorized or directed overtime, without a violation of law.

OGC
25X1 3. At the time the present regulations were established they were objected to by PMCD on the ground that they were inconsistent with the Federal law, but the [redacted]

4. I submitted a report on the overtime practice in the Agency with a recommendation for changing overtime regulations to conform to general Federal regulations on June 6, 1974. The recommendation has never been approved (copy attached).

C. Independent Contractors

Under Federal law, Independent Contractors are individuals who undertake to provide certain service for a stipulated sum of money. In this Agency, however, Independent Contractors who are retired annuitants may be hired at a daily rate of pay which is equal to the rate of pay they received as employees and they may work in the Agency performing duties comparable to those performed as employees. A limitation of \$36,000 per year is placed on what these individuals may receive. This limitation appears to indicate doubts on the part of Agency officials as to whether they are actually employees as the \$36,000 limitation of Title 5 of the U.S. Code applies only to employees. It does not apply to an Independent Contractor who contracts to perform a certain service and is not an employee. It is as though the Agency follows the Alice in Wonderland system of defining Independent Contractors i.e., an Independent Contractor is just what we say it is, no more, no less.

PMCD Position

1. I believe that these errors should be corrected. This can be

done by issuing regulations to correct the overtime and independent contracting practices and by giving the Position Management and Compensation Division the authority to make a complete review of positions and take corrective action, possibly spaced over a period of time to avoid downgrading actions.

2. Promotions should be based on performance in positions legitimately graded, not on speculative potential as determined by a Career Service Board. Promotions should be under the control of supervisors who are the only individuals qualified to judge work performance and employees' grades should be limited to the grades of their positions.

Recommendations

1. That a regulation be issued to make overtime rules consistent with the Federal law and to correct the present practices relating to Independent Contractors.
2. That an investigation be directed of the grade structure of this Agency in comparison with other Agencies and that corrective action be taken.
3. That except for unusual cases, promotions to and within upper-grade and supergrade levels be frozen until the validity of those levels has been established.

STAT



Chief
Position Management and Compensation Division

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6 JUN 1974

MEMORANDUM FOR: Deputy Director for Management and Services
SUBJECT : Overtime and Premium Pay Policy

1. Action Requested: Change in overtime and premium pay policy and regulations to conform to the requirements of Federal Law.

2. Basic Data:

Federal Laws

Title 5 U.S. Code, Subchapter V establishes the basic requirements for overtime for general schedule employees. These are as follows:

Section 5542: Overtime rates; computation

(a) For full-time, part-time and intermittent tours of duty, hours of work officially ordered or approved in excess of 40 hours in an administrative workweek, or (with the exception of an employee engaged in professional or technical engineering or scientific activities for whom the first 40 hours of duty in an administrative workweek is the basic workweek and an employee whose basic pay exceeds the minimum rate for GS-10 for whom the first 40 hours of duty in an administrative workweek is the basic workweek) in excess of 8 hours in a day, performed by an employee are overtime work. (NOTE: The provision designating work in excess of 8 hours in a day as overtime was originally included in Federal Law in Public Law 89-504, 18 July 1966.)

Section 5543: Compensatory time off

(a) The head of an agency may

(1) on request of an employee, grant the employee compensatory time off from his scheduled tour of duty instead of payment for an equal amount of time spent in irregular or occasional overtime work; and

(2) provide that an employee whose rate of basic pay is in excess of the maximum rate of basic pay for GS-10 shall be granted compensatory time off from his scheduled tour of duty equal to the amount of time spent in irregular or occasional overtime work instead of being paid for that work.

Section 5545: Annual premium pay

(c) the head of an agency, with the approval of the Civil Service Commission, may provide that

(2) an employee in a position in which the hours of duty cannot be controlled administratively, and which requires substantial amounts of irregular, unscheduled, overtime duty with the employee generally being responsible for recognizing, without supervision, circumstances which require him to remain on duty, shall receive premium pay for this duty on an annual basis instead of premium pay provided by other provisions of this subchapter, except for regular scheduled overtime, night, and Sunday duty, and for holiday duty. Premium pay under this paragraph is determined as an appropriate percentage, not less than ten per centum nor more than 25 per centum, of such part of the rate of basic pay for the position as does not exceed the minimum rate of basic pay for GS-10, by taking into consideration the frequency and duration of irregular, unscheduled overtime duty required in the position.

(The Civil Service Commission has established the following rules for determining the amount of annual premium pay:

1. An average of at least three but not more than five hours per week of irregular or occasional overtime work - 10%.

2. An average of over five but not more than seven hours per week of irregular or occasional overtime work - 15%.

3. An average of over seven but not more than nine hours per week of irregular or occasional overtime work - 20%.

4. An average of over nine hours per week of irregular or occasional overtime work - 25%.)

Fair Labor Standards Act Amendments of 1974
(P.L. 93-259, April 8, 1974)

Effective May 1, 1974, except for certain employees in executive, administrative, and professional positions, and those in foreign areas, all Federal employees are entitled to overtime pay for all work which the employer "suffers or permits" to be done. The Civil Service Commission will issue a tentative list of the exempt employees by April 26. Most employees at GS-11 and below will be covered under this law.

The Civil Service Commission, as the enforcement agency, will be responsible for post audit of overtime pay administration to determine violations and order corrective action.

Agency Regulations

A. Overtime

The Agency regulations on overtime and annual premium pay follow the Federal Law in some respects. However, points of substantial difference are:

1. Employees, GS-12 through GS-14, may receive overtime payments or compensatory time in lieu thereof for directed overtime work in excess of 48 hours in a given work week.

2. No overtime payment or compensatory time will be granted for hours of duty between 40 and 48 in a given work week unless such hours represent directed work on,

a. a position which requires substantial amounts of overtime work on a continuing basis, the productivity of which is predominantly measurable in units of production or hours of duty performed;

b. on any day during a work period of seven or more consecutive days, or,

c. a second job, the duties of which are substantially unrelated to the primary assignment.

(The requirement that 8 hours of work be contributed without pay is inconsistent with the Federal Law and with good management principles.)

The Agency regulation also provides for the substitution of compensatory time in place of regular overtime either on the request of employees at GS-11 and below or by

direction of the supervisor for employees in higher grades even though the Federal Law provides for such substitution only in the case of irregular or occasional overtime work.

The Agency regulation has never provided that overtime pay is required for all work in excess of eight hours in a day. There are a number of nonstandard work schedules in the Agency now utilizing 12 hour work days for which under Federal Law four hours of overtime pay are required for each 12 hour day. Other agencies which have tried similar schedules have been required to pay overtime. Compensatory time was not permitted.

The Agency overtime regulation has been in substantially the same form since March 1962. During this period the Agency regulation has required the normal sacrifice of eight hours of overtime compensation for employees at GS-12 through GS-14.

B. Annual Premium Pay

The provision of the Agency regulation covering annual premium pay is substantially the same as that established by the Federal Law.

Application of Agency Compensation Policy

Agency professional employees at GS-12 and above have been expected and encouraged to work overtime whenever they determined that such work was necessary or when directed, in nearly all cases without any form of compensation. Agency duty officers have worked in Headquarters offices on Saturday regularly for a dozen years or more without any form of compensation. The expressed view of many high officials has been that Agency professionals should be glad to perform such "discretionary" overtime without additional pay, since they are well compensated by their regular salaries. This view is in disregard of the fact that their regular salaries are based on a 40-hour week.

Agency officials having authority to approve such overtime have been aware that it was being performed and approved of it.

Failure to formally authorize or approve overtime where approving officials were aware of and agreed to performance has been held by the Court of Claims to require payment.

The Court of Claims in Anderson v. United States 136 Ct. Cl 365 (1956) makes the point that "The Commissioner of Customs, as the authorized deputy of the Secretary of the Treasury, had authority under the statute

to order or approve overtime. While he did not order the work to be performed, he certainly knew and approved of its being done. . . . In withholding orders for the approval of overtime, the Commissioner intended to withhold compensation for services performed. . ." The Court directed payment to the employee.

The Court of Claims in Rapp v. United States, 340 F. 2d 635, 167 Ct. Cl 852 (1964) decided further "Where plaintiffs were not only induced to perform duty officer tours but were given reasonable and understandable grounds for fearing they might jeopardize their positions if they did not do so" they were entitled to compensation.

Many CIA professionals have performed Saturday duty tours without question and without overtime pay for many years for this reason. It seems clear that the fear of reprisal is a strong deterrent to employee claims for overtime.

With regard to annual premium pay, while the Agency regulation is substantially in agreement with the Federal Personnel Manual, we have deviated from the established percentage requirements for pay. In certain cases it was decided, for administrative reasons, to pay a lesser percentage rate than established. The legality of these actions is questionable.

Applicability of Federal Law to the CIA

The question as to whether the Federal Premium Pay law applies to the CIA has apparently never been ruled on by the Comptroller General or the Courts. The U.S. Code Title 5, Subchapter V on Premium Pay, however, provides for no exclusion of the Agency. While this may not be conclusive, it should be noted that Chapter 51, Title 5, on Classification of Positions, does provide for exclusion of the Agency. The absence of a specific exclusion for application of Premium Pay provisions to the Agency is evidence of intent that the Agency should be covered.

3. Staff Position

The provision of the Agency regulation limiting compensation for the first eight hours of overtime to employees at GS-12 through GS-14 predominantly in production jobs is prejudicial to the rights of employees in jobs not of a production nature who may be equally industrious and conscientious. Further, it is inconsistent with the annual premium pay provision which does not provide for ignoring the first eight hours of overtime.

OGC
25X1 The primary reason for the Agency regulation may have been to discourage the use of excessive overtime but the result was to avoid payment for overtime while benefiting from the extra work performed. This result is not defensible in principle. However, at the time the Agency regulation was established th

[Redacted]

more concerned with employees' rights than it did many years ago. Employee organizations are more vociferous. Further, it is difficult to explain to employees why in the CIA one gives eight hours of free overtime to the Government which he is not required to do elsewhere. This cannot be justified on security grounds.

From the tone of decisions of the Court of Claims on the right of Federal employees to overtime compensation, it seems probable that any claim by an Agency employee supported by evidence of overtime work with tacit approval of officials would be decided in favor of the employee. Such a decision might require the Agency to compensate other employees so deprived of overtime compensation.

Therefore, consideration should be given to bringing all forms of Agency premium pay into line with the general Federal Law. Consideration should also be given to reviewing the extent to which employees who have not been compensated for overtime should be paid.

4. Recommendation:

a. That a committee be established in the Office of Personnel to review the overtime pay policies and regulations and revise to bring into agreement with the Federal Law..

b. That the committee determine practicable limitations to set on the authorization of overtime.

c. That the committee consider and make recommendations as to the extent to which employees who have worked overtime without compensation under the present regulations should be compensated.

(Signed) F. W. M. Janney

F. W. M. Janney
Director of Personnel

APPROVED /s/ Harold L. Brownman

11 JUN 1974
Date

DISAPPROVED

Date

Distribution:

Orig - Adse (Ret to D/Pers)
2 - DD/M&S
1 - D/Pers
1 - OP/PMCD

STAT

[redacted] (22 Apr 74)
[redacted] 28 May 74)

* Pending OGC concurrence and agrees to assist in the study.

DD/A 75-4033

STAT

**Central Intelligence Agency
Washington, D.C. 20505**

STAT

I wish to acknowledge receipt of your 15 July 1973 memorandum to me concerning administrative practices in the CIA, and inform you of action I have taken to date. I have requested, as appropriate, positions from both the General Counsel and the Director of Personnel on matters raised in your communication. I am now in receipt of those replies. I have forwarded the entire matter to the Inspector General with a request that he undertake a review and study of the issues and present me with his findings and recommendations. Upon conclusion of that undertaking, I will be in further communication with you.

Sincerely,

**M. E. Colby
Director**

ORIGINATOR:

Signed: John F. Blake 28 AUG 1975
John F. Blake (Date)
Deputy Director
for
Administration
Att. to DD/A 75-4014 Original - Adse
DD/A Subject 1 - DCI
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